

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
EASTERN DISTRICT OF MISSISSIPPI

JOSEPH L. JOHNSON

PLAINTIFF

V.

CIVIL ACTION NO. 4:11-cv-00144-CWR-FKB

SANDRA ATWOOD

DEFENDANT

REPORT AND RECOMMENDATION

This cause is before the Court *sua sponte*. This *pro se* prisoner civil rights case was filed in September, 2011. (Docket No. 1). On September 21, 2011, the Court ordered process be issued and served by the United States Marshal since Plaintiff is proceeding *in forma pauperis*. (Docket No. 9). Process was returned unexecuted on October 15, 2011, as the defendant is no longer employed by the correctional facility from which Plaintiff's claim arises. (Docket No. 15). On November 2, 2011, the Court ordered Plaintiff to provide the current address for the defendant and warned that failure to do so could result in a recommendation that the case be dismissed. (Docket No. 16). On December 1, 2011, Plaintiff responded but failed to provide a current address. (Docket No. 17).

Plaintiff is not excused by his incarceration from making a reasonable effort to identify and locate the defendant, nor may the Court or the Marshal Service perform investigatory services for Plaintiff. See Rochon v. Dawson, 828 F.2d 1107, 1110 (5<sup>th</sup> Cir. 1987); Bowman v. Johnson, 2010 WL 1225693 (E.D. Va. 2010). Since more than 120 days have passed from the filing of the complaint, and from the time the Court ordered process served, as well as from the time process was returned unexecuted, the undersigned recommends that this action be dismissed without prejudice for failure to serve process. Fed. R. Civ. P. 4(m). Plaintiff has not shown "good cause" for failure to properly effectuate service of process. Lindsey v. U.S.R.R.

Retirement Bd., 101 F.3d 444 (5<sup>th</sup> Cir. 1996).

The parties are hereby notified that failure to file written objections to the proposed findings, conclusions, and recommendation contained within this report and recommendation within fourteen (14) days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the proposed factual findings and legal conclusions accepted by the district court. 28 U.S.C. § 636; Fed. R. Civ. P. 72(b); *Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996).

Respectfully submitted, this the 22nd day of December, 2011.

/s/ F. Keith Ball  
UNITED STATES MAGISTRATE JUDGE